

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re: Section 34A Tariff Proceeding

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D.T.E. – 03-58

Reply Brief of City of Cambridge

The Company argues that Department precedent regarding section 34A tariffs is: a) “limited,” and b) “not, in general, directly applicable to this proceeding,” and “thus the Department should rely on its long standing precedent regarding rate design issues to analyze the Company’s proposed Rate S-2 tariff.” (Company’s initial brief page 2, 7)

1) The Department precedent regarding section 34A tariffs is not limited.

The alternative tariff authorized by MGL c 164 s 34A is a tariff that is available to municipalities in Massachusetts that are not served by municipal light departments. There are only 301 municipalities in Massachusetts that are not served by municipal light departments. In contested proceedings (DTE 98-69 and DTE 98-108), the Department has already approved section 34A tariffs for more than 224 of these 301 municipalities. The Company’s problem with the section 34A precedent is not that it is “limited.” The Company’s problem with the section 34A precedent is that the Company’s tariff in this case cannot be reconciled with that clear and controlling precedent.

2) The Company’s proposed tariff is inconsistent with the section 34A precedent established in DTE 98-69.

The ruling in DTE 98-69 established two principles regarding the development of section 34A tariffs. The first part of the ruling addressed the application of rate continuity principles to section 34A tariffs. The second part of the ruling addressed the unbundling of the underlying streetlight tariff to separate “lamp service” from “distribution service.”

“ . . . when a municipality chooses to purchase street-lighting equipment pursuant to G.L. c164 s 34A, it is necessary for an electric company to unbundle the current street-lighting rates by separating the costs for distribution service from the costs for lamp service and to develop an alternative street-lighting rate.” (DTE 98-69 p 13)

Both aspects of this ruling need to be understood in order to apply the ruling. The 18.7 million dollar revenue requirement referenced on page 6 of the ruling is the entire revenue requirement in the underlying S1 rate. The 1.68 cents per kwh distribution rate, established in DTE 98-69, resulted from the un-bundling (p 13 of the ruling) of the distribution portion of that larger revenue requirement. The 1.68 cents per distribution rate was exactly equal to the distribution rate per kwh that was included in the approved distribution revenue requirement in the underlying cost of service study, and the approved distribution component embedded in the approved underlying streetlight tariff. In this proceeding, the Company has been unwilling to disclose the dollar amount of the approved distribution revenue requirement in the underlying studies. At page 70 of the hearing transcript, for example, see the following exchange:

Q . . . that's the overall allowed revenue requirement for everything, including distribution?

A "That's correct."

Q. "But there's no specific allowed revenue requirement for distribution specifically?"

A. "Not specifically. We would have to go into the cost allocation study and ferret out the different pieces that make up the overall revenue requirement to get the distribution piece of that."

In other words, the Company has not "unbundled the current street-lighting rates by separating the costs for distribution service from the costs for lamp service . . ." in the fashion that Mass Electric was required to un-bundle its underlying tariff in DTE 98-69.

The Company's approach is different from the Mass Electric approach. The Mass Electric tariff is based on the approved distribution revenue requirement. The Company's proposed tariff is not based on the approved distribution revenue requirement. The Company acknowledged this discrepancy between the two approaches at pages 54 and 55 of the hearing transcript:

Q. And by delivery revenue, I assume you mean revenue requirement?

A. I'm referring to the delivery service charges that are part of the proposed rate. Revenue requirement usually has a broader meaning than just delivery services...

Q. So the delivery requirement, delivery revenue is different from revenue requirement?

A. Yes.

Q. Some of these statements seem to be inconsistent. . . .

A “. . . In 00-37 (actual reference should be DTE 98-69) the revenue requirement associated with unbundling the streetlight class cost of service was totally done on an embedded basis, embedded cost of service basis. So in a sense Mass Electric started from the bottom and worked up. When I say the bottom, it started from a revenue requirement and worked up to a rate.”

In light of the fact that Company has acknowledged that the MECO S5 rate was based on compliance with the un-bundling of the distribution revenue requirement, and the Company’s admission that they have not calculated the approved distribution revenue requirement in the underlying tariff in this proceeding, we are troubled by the Company’s claim that the tariff in this case nevertheless complies with the precedent established in that earlier section 34A proceeding.

3) The Company’s proposed tariff is inconsistent with the section 34A precedent established in DTE 98-108.

The Company’s proposed section 34A tariff is inconsistent with the precedent established in DTE 98-108 in two fundamental ways.

First, the 2.086 cents per kwh distribution tariff approved in DTE 98-108, was exactly equal to the approved 2.086 cents per kwh distribution tariff approved in the underlying S2 rate. Boston Edison already had a tariff that was based on community ownership of and community maintenance of streetlights. That underlying tariff already had a specific distribution charge per kwh in that underlying tariff that was related exclusively to distribution service. The ruling in the BECO case allowed that pre-existing distribution tariff to be utilized as the section 34A distribution tariff.

In this proceeding, the underlying S1 tariff does not have a specific charge for distribution service. The distribution charge is embedded in the luminaire charge. In this proceeding, the Company has been unwilling to disclose the approved distribution requirement that is embedded in that luminaire charge.

Based on the City’s review of the underlying cost studies, the City has determined that the 2.69 cents per kwh charge, referenced in the Company’s response to Information Request City 1-2, is well in excess of the distribution revenue requirement *sought* in the underlying cost of service study. Based on the City’s review, the underlying study includes 2.25 cents per kwh of *distribution revenue sought* and 1.825 cents per kwh *distribution revenue approved*. It would be redundant to repeat in this reply brief the analysis of the Company’s cost of service study that is already included in the City’s initial brief.

Secondly, the Company is proposing a Customer Charge per lamp to recover portions of the luminaire charge that were *not recovered* by either Boston Edison or Mass Electric in either of the earlier referenced section 34A proceedings. This “Customer Charge per Lamp” was initially requested by the Company in DTE 98-108. This “Customer Charge per Lamp” was not included in the rate that was approved in DTE 98-108.

4) The Company's proposed tariff is also inconsistent with the Department's long-standing rate principles.

The Company argues that general rate making principles should control, rather than the section 34A precedent referenced above. The Company identifies five general principles or goals that should guide utility rate structure: 1) Efficiency, 2) Simplicity, 3) Continuity, 4) Fairness, and 5) Earnings Stability. The Company's proposed section 34A tariff is in conflict with all five of these rate-making goals.

Efficiency

In the context of utility rate making, a proposed tariff is deemed to be "efficient" if it recovers all of the costs of serving a particular rate class. The Company acknowledges that the underlying street-lighting rate is subsidized through a \$280,000 subsidy that is currently paid by other rate classes. (See Company's initial brief page 6.) The Company does not propose to refund any of that existing subsidy to those other rate classes.

Instead, the Company proposes to over collect from the City, in the form of a "Customer Charge per Lamp" for: a) streetlight services that the Company has no continuing responsibility to provide following the streetlight purchase, and b) services that the Company charges for separately, as separate charges under the license agreement. It is not "efficient" to collect for services not provided. It is not "efficient" to collect twice for the same services, once in the form of a Customer Charge, and second in the form of separate charges under the license agreement.

The following is the list of items included within the Customer Charge, according to the Company's witness at the hearing, and the page reference in the hearing transcript, where the testimony is given:

1) Streetlight styles, design	pgs. 31 and 32
2) Streetlight lumen sizes	p.32
3) Streetlight light intrusion advice	p.31
4) Streetlight location	p.31
5) Streetlight availability from the Company	p.31
6) Streetlight energy efficiency	pgs. 32 and p 33
7) Streetlight connection services	pgs. 32, 33, and 34
8) Streetlight service to determine adequacy of the pole	pgs. 31, 33, 34

As pointed out in the City's initial brief, the first six listed components of the Customer Charge are not the responsibility of the Company following a streetlight purchase. The last two components of the charge, as listed by the Company's witness, are separately charged in the Company's proposed license agreement.

Simplicity

The Company's proposed tariff is not "simple." Without the Company specific information regarding the classification of the municipal lights as either streetlights or floodlights, it is impossible for the only customer eligible for this tariff, the City of Cambridge, to calculate the dollar impact of the proposed tariff.

Rate Continuity

"Rate continuity," in the underlying streetlight tariff in this case, is advanced through the use of the \$280,000 subsidy of the streetlight class by the other rate classes. The streetlight class avoids a sudden increase in the rate that would be necessary, absent that subsidy. The Company is not proposing to eliminate or refund that subsidy. They are simply proposing to continue that payment by those other rate classes, while at the same time, recovering from the City for services either not provided, or double recovering for services separately charged through the license agreement.

The Company claims that rate continuity is advanced because the S2 rate is less than the S1 rate. The City points out that the City will have responsibility for managing and maintaining the streetlights following the purchase. The test of rate continuity in this case should be whether or not the cost of distribution service increases, from the cost of distribution service in the underlying rate, not by comparing a comprehensive S1 tariff to the much more limited section 34A distribution tariff.

Fairness

The proposed rate is not "fair." Through the mechanism of the Customer Charge per lamp, the Company is proposing to allocate to the City the cost of maintaining streetlight support staff and streetlight support services that will continue to be provided to private streetlight customers, but not to the City. Furthermore, because the municipal lights represent the preponderance of the lights (85%) in Cambridge, this per lamp approach to allocating the cost of the Company's streetlight support, allocates the preponderance of that streetlight support cost to the one customer that is no longer receiving that streetlight support. It is hard to understand how it is fair for the City to pay for 85% of the cost of streetlight support that it is no longer using.

Earning Stability

The proposed rate violates the principle of "earnings stability." As stated in the Company's initial brief, this goal would be advanced if the Company based its proposed rate on a cost recovery that is designed to recover the specific cost incurred. However, the Company's proposal, if approved, would recover costs well in excess of the specific cost incurred. As already pointed out above, the Company's proposal is not based on meeting any revenue requirement. The Company's proposal is based on recovering costs for some streetlight services that are not provided. The Company's proposal is based on recovering the cost of connection services twice, pole survey services twice, and planning

for the installation of streetlights on those poles, twice. There is a difference between price gouging and promoting the goal of “earning stability.”

5) The precedent established in DTE 98-69 and DTE 98-108 applies the Department’s long standing rate principles to the limited distribution tariff contemplated by G.L. c 164 s 34A.

The Company’s initial brief seems to consider the section 34A precedent, which they attempt to distinguish, as different from the Company’s general rate principles. In fact, the Department’s section 34A precedent represents the application of those general rate principles to the limited distribution tariff contemplated by G.L.c 164 s 34A.

The 1.68 cents per kwh and the 2.08 cents per kwh distribution tariffs, approved in DTE 98-69 and DTE 98-108 respectively, met the Department’s general rate making goals, in the same fashion and to the same extent that those goals were met in the underlying streetlight tariffs, from which those distribution tariffs were unbundled. Those approved section 34A tariffs represented the distribution tariff embedded in the luminaires charge (in the case of Mass Electric), or specifically included as the approved distribution rate in the pre-existing S2 rate (in the case of Boston Edison). Because these earlier section 34A distribution tariffs were exactly equal to the distribution charge in the underlying tariff or the underlying cost of service study, these earlier section 34A tariffs met the Department’s general rate making goals to the same extent that the underlying tariffs met those general rate making goals.

In this section 34A proceeding, the Company is proposing a different approach, which yields a different result.

Those earlier section 34A tariffs were just as “efficient” as the underlying tariffs because they recovered the same “approved distribution revenues requirement” included in those underlying tariffs. In this proceeding, the Company has acknowledged that its rate is not based on meeting any approved distribution revenue requirement. In this proceeding, the Company has not disclosed on the record its approved distribution revenue requirement.

Those earlier section 34A tariffs were just as “fair” as the underlying tariffs because they recovered the same “approved distribution revenues requirement” included in those underlying tariffs. In this proceeding, that Company has acknowledged that its rate is not based on meeting any approved distribution revenue requirement. In this proceeding, the Company has not disclosed on the record its approved distribution revenue requirement. And in this proceeding, the Company is proposing to burden the City with the preponderance of the support of the Company’s streetlight support staff, even though that streetlight support staff will be focused primarily on providing streetlight support to private streetlight customers.

Those earlier section 34A proceedings met the “rate continuity” goals to the same extent as the underlying tariffs met those “rate continuity” goals, because they recovered the same “approved distribution revenues requirement” included in those underlying tariffs.

In this proceeding, that Company has acknowledged that its rate is not based on meeting any approved distribution revenue requirement. In this proceeding, the Company has not disclosed on the record its approved distribution revenue requirement.

Those earlier section 34A proceedings met the “earning stability” goals to the same extent as the underlying tariffs met those “earning stability” goals, because they recovered the same “approved distribution revenues requirement” included in those underlying tariffs. In this proceeding, that Company has acknowledged that its rate is not based on meeting any approved distribution revenue requirement. In this proceeding, the Company has not disclosed on the record its approved distribution revenue requirement.

Those earlier section 34A tariffs were “simple” rates per kwh that were easy to apply. In this proceeding, the Company’s combination of Customer Charges per light and distribution charges per kwh is not simple to apply. The 2.69 cents per kwh rate, alluded to by the Company in response to Information Request City 1-2, would be a simple rate to apply, but it would represent an over-collection. As pointed out in the initial brief, if all of the higher lumen lights are deemed to be flood lights, the cost recovery proposed is five times the cost recovery allowed in DTE 98-69. If there are a minimal number of floodlights, the cost recovery proposed is almost three times the cost recovery allowed in the DTE 98-69.

6) The Company has the burden of demonstrating that its proposed tariff recovers only the distribution revenues approved in the underlying cost studies and the underlying tariff. The Company has not met that burden.

In spite of the requests on the record both from the Department and from the City, the Company has not demonstrated that its proposed section 34A tariff complies with the cost recovery allowed in the MECO S5 tariff. In order to do so, the Company would need to establish that the proposed tariff only recovers the “approved distribution revenues” in the underlying cost studies and / or the underlying tariff.

Instead, the Company has acknowledged that its tariff is not based on meeting any approved distribution revenue requirement. In fact, the Company has yet to identify what that approved distribution revenue requirement might be.

Instead, we do know that the proposed tariff is designed in part to recover costs for streetlight services that are not the responsibility of the Company following a streetlight purchase.

Instead, we do know that the proposed tariff is designed to recover the cost for streetlight connection services, pole survey services, and the cost of planning for the installation on the poles, twice, once through the Customer Charge and a second time through the specific charges under the proposed license agreement.

Instead, we do know that if we apply the Mass Electric S5 distribution rate, approved in DTE 98-69, to the 484 kwh per year sodium 9500 streetlight, which is the predominant streetlight in Cambridge, the annual charge would be \$8.13 per year. The Company's proposal results in an annual charge somewhere between \$21.55 and \$44 per year for the same 9500 lumen streetlight, depending on the number of flood lights assumed. This is approximately three to five times more than the S5 rate applied to same streetlight. The only way that this result could be deemed to be consistent with the level of cost recovery allowed in DTE 98-69, would be if the underlying luminaire charges in the S1 tariff in Cambridge were three to five times higher than the underlying luminaire charges in the Mass Electric S1 tariff. They are not.

The Company has not met its burden of demonstrating that its proposed tariff complies with the level of cost recovery allowed in DTE 98-69.

Relief Sought

- 1) The tariff as proposed should be rejected.
- 2) A Customer Charge, if approved at all, should be per account, not per light, should relate to cost recovery for the billing service, and should approximate the level of cost recovery from municipal customers that was approved in the Customer Charge per account in DTE 98-108.
- 3) A single distribution charge per kwh applicable to all municipal streetlights and municipal flood lights should be established in a compliance filing.
- 4) The single distribution charge per kwh should be based on the compliance distribution revenue requirement supported by the line items for distribution expenses (as distinguished from streetlight maintenance expenses) in the underlying cost of service study.

Respectfully Submitted,

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